

BEFORE THE BOARD OF MILK CONTROL
AND THE DEPARTMENT OF LIVESTOCK
OF THE STATE OF MONTANA

In the matter of the amendment of)	NOTICE OF PROPOSED
ARM 32.23.102 and ARM 32.23.301)	AMENDMENT AND ADOPTION
and the adoption of a new rule)	NO PUBLIC HEARING
pertaining to licensee assessments)	CONTEMPLATED
)	

TO: All Concerned Persons

1. On October 19, 2015, the Board of Milk Control ("Board") and the Department of Livestock ("Department") propose to amend and adopt the above-stated rules.

2. The Board and Department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Livestock no later than 5:00 p.m. on September 30, 2015, to advise us of the nature of the accommodation that you need. Please contact Christian Mackay, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001; telephone: (406) 444-9321; TTD number: 1 (800) 253-4091; fax: (406) 444-1929; e-mail: cmackay@mt.gov.

3. The Board proposes to amend the following rules as follows, new matter underlined, deleted matter interlined:

32.23.102 TRANSACTIONS INVOLVING THE PURCHASE AND RESALE OF MILK WITHIN THE STATE (1) As an aid to the efficient collection of license fees and assessments, each distributor who purchases milk from producers shall deduct from payments due such producers any license fees and administrative assessments due the department from such producers under 81-23-202 and 81-23-105, MCA. The distributor shall transmit such fees and assessments to the department together with a statement of individual producer assessment payments. Assessments under 81-23-202, MCA shall be reported and paid at least quarterly ~~monthly~~, as provided in that section. Assessments under 81-23-105, MCA and ARM 32.23.302 shall be separately reported and paid monthly.

(2) through (16) remain the same.

AUTH: 81-23-104, 81-23-105, 81-23-202, MCA

IMP: 81-23-103, 81-23-105, 81-23-202, 81-23-402, MCA

REASON: The Board proposes to amend the above-stated rule to conform with 81-23-202(5), MCA (2015), requiring payment of the fee on a monthly basis.

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32.23.301 LICENSEE ASSESSMENTS (1) through (1)(d) remain the same.

~~(e) A fee of \$0.155 per hundredweight per month, with a minimum of \$50.00 per month, whichever is greater, or a maximum of \$1,050.00 per month, on the volume of all classes of milk produced and sold by a person licensed by the department, to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department.~~

~~(i) This fee, pursuant to 81-23-202(4)(a), MCA, must be paid quarterly before January 15, April 15, July 15, and October 15 for the prior quarter of each year.~~

~~(2) The fee assessed in (1) must be paid before the 25th day of each month for milk sold in the preceding month.~~

~~(3) The fee assessed in (1) must be paid to the department in accordance with ARM 32.23.102(1).~~

AUTH: 81-1-102, 81-23-104, 81-23-202, MCA

IMP: 81-1-102, 81-23-103, 81-23-202, MCA

REASON: The Board proposes to amend the above-stated rule to clarify that the Department is the agency authorized under 81-23-202(4)(a), MCA, to assess the milk inspection and laboratory administration fee and to conform with 81-23-202(5), MCA (2015), requiring payment of the fee assessed in (1) on a monthly basis.

The fee collected under the proposed amended rule will have no fiscal impact on the public because the new rule changes the location of the rule without changing the amount of the fee currently assessed or the persons who are assessed the fee in ARM 32.23.301(1)(e). There were 68 persons in the state who have paid cumulative fees of \$33,723.69 in July 2015.

4. The Department proposes to adopt the following rule:

NEW RULE | LICENSEE ASSESSMENTS (1) Pursuant to 81-23-202, MCA, the following assessment is levied: a fee of \$0.155 per hundredweight per month, with a minimum of \$50.00 per month, whichever is greater, or a maximum of \$1,050.00 per month, on the volume of all classes of milk produced and sold by a person licensed by the department, to be used for the administration of the milk inspection and milk diagnostic laboratory functions of the department.

(2) The fee assessed in (1) must be paid before the 25th day of each month for milk sold in the preceding month.

(3) The fee assessed in (1) must be paid to the department in accordance with ARM 32.23.102(1).

AUTH: 81-1-102, 81-23-202, MCA

IMP: 81-1-102, 81-23-202, MCA

REASON: The Department proposes the above-stated rule to clarify that the Department is the agency authorized under 81-23-202(4)(a), MCA, to assess the milk inspection and laboratory administration fee and to conform with 81-23-202(5), MCA (2015), requiring payment of the fee assessed in (1) on a monthly basis.

The fee collected under the proposed new rule will have no fiscal impact on the public because the new rule changes the location of the rule without changing the amount of the fee currently assessed or the persons who are assessed the fee in ARM 32.23.301(1)(e). Presently there are 68 persons in the state who have paid cumulative fees of \$33,723.69 in July 2015.

5. Concerned persons may submit their data, views, or arguments in writing concerning the proposed action to Christian Mackay, Department of Livestock, 301 N. Roberts St., Room 308, P.O. Box 202001, Helena, MT 59620-2001, by faxing to (406) 444-1929, or by e-mailing to MDOLcomments@mt.gov to be received no later than 5:00 p.m., October 13, 2015.

6. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make a written request for a hearing and submit this request along with any written comments they have to the same address as in 5 above. The written request for hearing must be received no later than 5:00 p.m., September 30, 2015.

7. If the department receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons who are directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the public hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 7 persons, based upon the estimate that approximately 68 producers and producer-distributors operate in Montana.

8. The Board and Department maintain lists of interested persons who wish to receive notices of rulemaking actions proposed by these agencies. Persons who wish to have their name added to the lists shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Board and Department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at <http://sos.mt.gov/ARM/Register>. The Secretary of State strives to make the electronic copy of the notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the Secretary of State works to keep its

web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

10. The bill sponsor contact requirements of 2-4-302, MCA, do apply and have been fulfilled. The primary bill sponsor, Senator Taylor Brown, was contacted by telephone at 406-252-6661 and e-mail at taylor@northernbroadcasting.com on August 31, 2015.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Scott Mitchell
Scott Mitchell
Chair
Board of Milk Control

/s/ Sherry Rust
Sherry Rust
Rule Reviewer

/s/ Christian Mackay
Christian Mackay
Executive Officer
Department of Livestock

Certified to the Secretary of State August 31, 2015.